

If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See 86 Ill Adm. Code 130.310(a). (This is a GIL.)

March 27, 2006

Dear Xxxxx:

This letter is in response to your letter dated November 14, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing in request of your opinion as to the sales tax rate that ABC should be charging its retail customers on the sale of single serve beverages, soft drinks and individually pre-packaged snack food items.

Recently we have received conflicting verbal statements regarding the correct Retailer's Occupation Tax rate applicable to abovementioned [sic] beverages, soft drinks and snack food items from the Illinois Department of Revenue. On one occasion beverages and snack food items were "deemed" to be for immediate consumption and taxable at the full state rate. On another occasion the snack food items were considered food and subject to tax at the reduced rate.

#### **Statement of Facts**

ABC operates ninety-nine retail stores within the state. The stores are located within eighteen counties and sixty-four cities. In addition to rental of DVDs and VHS movies, each store sells a variety of single serve beverages, soft drinks, and individual pre-packaged snack foods items.

Single serving beverages and soft drinks sold at the various stores include bottled or canned: chocolate drinks (Yoo-Hoo), coffee drinks (cappuccinos and frappuccinos),

energy drinks, sodas (pop), iced teas, juice (both less than and greater than 50% natural fruit), sports drinks (allsport), and water (flavored and pure spring).

Individually pre-packaged snack foods items sold at the various stores include: candy, cakes, cheese curls, chocolate covered and honey roasted nuts, cookies, cracker jacks, ice cream (novelties and pints), frozen pizza, fruit snacks, gum, meat snacks (slim jims and beef jerky), salty snacks (potato chips, corn chips pretzels, peanuts, popcorn, and sunflower seeds), and individual packages of un-popped popcorn.

ABC does not provide eating or seating facilities on the store premises. Additionally, ABC does not provide heating or warming devices on the stores premises.

As mentioned above ABC sells a variety of beverages and snack food items. The soft drink portion of ABC's retail sales is somewhat less than fifty percent of its total beverage and snack food sales.

### **Statement of Law (in part)**

Section 130.310 Food, Drugs, Medicines and Medical Appliances

a) General. With respect to food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use, the **tax is imposed at the rate of 1%.**

b) Food

1) A food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.

2) Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food which has been prepared for immediate consumption **do not qualify** for the reduced rate.

For example:

A) gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food which has been prepared for immediate consumption or which provide facilities for on-premises consumption are subject to the full rate of tax.

B) concession stands, snack shops and other establishments which sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.

C) sales of all hot food and hot food products are sales of food for immediate consumption.

3) Delicatessens, markets, dairies and bakeries and other establishments which sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. However, the full rate will apply to all sales made by such establishments which provide facilities for the consumption of food on premises unless those facilities utilize a separate means of recording and accounting for collection of receipts from such sales for consumption on the premises and are physically partitioned from areas in which food not for immediate consumption is sold. The phrase "separate means of recording and accounting for collection of receipts" includes cash registers which separately identify high rate and low rate sales, separate cash registers, and other methods by which the tax on high rate and low rate sales are recorded at the time of collection.

4) The reduced rate does not extend to alcoholic beverages. An alcoholic beverage is any beverage subject to the tax imposed under Article VIII of the Liquor Control Act of 1934 [235 ILCS 5/Art. VIII].

5) The reduced rate does not extend to soft drinks. Soft drinks will be taxed at the State sales tax rate of 6.25%. The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. *"Soft drinks" does not include coffee, tea, noncarbonated water, infant formula, milk or milk products as defined in Section 3(a)(2) and (4) of the Grade A Pasteurized Milk and Milk Products Act [410 ILCS 635], or drinks containing 50% or more natural fruit or vegetable juice.* (Section 2-10 of the Act) Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices which are reconstituted to natural strength are not soft drinks.

6) Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. *Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer's premises.* It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. "Premises" are that area over which the vendor exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Thus, all food sold by a restaurant for consumption on premises, whether prepared for immediate consumption or not, is subject to the high rate. Vendor premises would include eating areas provided by employers for employees, common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to such areas are permitted to use them for consumption of food products. It will be presumed that food sold by vendors with on-premises consumption facilities will, in fact, be consumed on premises unless the vendor presents evidence to the contrary from its books and records.

7) For purposes of this Section, effective June 1, 1996, food for human consumption that is to be consumed off the premises where it is sold (Section 2-10 of the Act) includes all food sold through a vending machine, except soft drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. For example, a candy bar sold through a vending machine is subject to the low rate of tax regardless of whether on-premises facilities for consumption are provided at that location.

### **Requested Ruling**

Based on the aforementioned we respectfully request a private letter ruling with your determination of the Retailer's Occupation Tax rate applicable to single serving beverages and the individually packaged snack foods items listed above sold from ABC's store locations.

**Authority Supporting Requested Ruling of Reduced Rate**  
Regulation §130.310 (b) (6)

ST 98 0007-PLR

Authority Contrary to the Requested Ruling

ST 03 0011-PLR

ST 87 0450-PLR

ST 92 0640-PLR

### **Representations**

To the best of our knowledge, ABC and XYZ, the Illinois Department of Revenue has not previously ruled on the same or a similar issue for ABC or a predecessor. Additionally, to the best of our knowledge neither ABC, nor XYZ has previously submitted this issue, or a similar issue to the Illinois Department of Revenue. ABC is neither under audit examination, nor is there pending litigation in cases involving ABC or its affiliates.

There appears in this ruling request no trade secret information to which ABC would request be deleted from the publicly disseminated version of the private letter ruling.

Enclosed is an IL -2848 Power of Attorney.

### **DEPARTMENT'S RESPONSE**

The Department does not wish to respond with a Private Letter Ruling since there are regulations and letters that are dispositive of the issues at hand. For general information regarding the taxation of food, we refer you to the Department's regulation at 86 Ill. Adm. Code 130.310. You may also wish to take a look at sales tax letter ST 91-0846 on the Department's web site.

Food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), is taxed at the lower rate of 1% plus local taxes if any. See 86 Ill. Adm. Code 130.310(a).

Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food which has been prepared for immediate consumption do not qualify for the reduced rate. For example:

- A) Gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food which has been prepared for immediate consumption or which provide facilities for on-premises consumption are subject to the full rate of tax.
- B) Concession stands, snack shops and other establishments which sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.
- C) Sales of all hot food and hot food products are sales of food for immediate consumption. See 86 Ill. Adm. Code 130.310(b)(2).

Delicatessens, markets, dairies and bakeries and other establishments which sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. See 86 Ill. Adm. Code 130.310(3).

The reduced rate does not apply to alcoholic beverages, nor soft drinks. The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice. Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices which are reconstituted to natural strength are not soft drinks. See 86 Ill. Adm. Code 130.310(b)(4) and (b)(5).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., prepackaged candy bars, snacks, chips, ice cream. It is presumed that retailers who sell food prepared for immediate consumption in individual single-size servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during the business day such items are sold and actually consumed. See 86 Ill. Adm. Code 130.310(b)(6).

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both foods that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of recording and accounting for collection of receipts.

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a).

In situations in which there are no dining facilities and over 50% of the sales are of food that is not prepared for immediate consumption, the low rate would apply. However, any foods prepared for immediate consumption (for example, if such a business began selling freshly cooked hot dogs or store made popcorn), and all soft drinks should be taxed at the high rate.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote  
Associate Counsel

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